

REMARKS

Claims 1-18 remain pending in the application. The inventions set forth by claims 1-18 are alleged not to meet the requirements of 35 U.S.C. §103(a) as being unpatentable over Rogerson (US 2003/0093798A1, "Rogerson") in view of Muller et al (US 6,389,468 "Muller"); and as being unpatentable over Rogerson (US 2003/0093798A1, "Rogerson") in view of Macera et al (US 5,490,252 "Macera"). The applicants respectfully traverse the allegation and respond as follows.

CLAIMS 1-18 MEET THE REQUIREMENTS OF SECTION 103(a)

The issue of patentability raised by the Office action, and which the applicant must overcome, is whether the combination of either Rogerson in view of Muller or Rogerson in view of Macera renders unpatentable claims 1-18 under 35 U.S.C. § 103(a). The applicants submit that claims 1-18 meet the requirements of 35 U.S.C. § 103(a) and are therefore allowable.

As discussed in the applicants' previous response, to establish a *prima facia* case of obviousness, and hence to find claims 1-18 unpatentable under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based upon applicant's disclosure. MPEP at § 2142 (emphasis added).

In determining whether the claims meet the requirements of patentability including § 103(a), the applicants' disclosure is properly relied upon to determine the meaning of terms used in the claims. While doing so, the perspective of the person of ordinary skill in the art must be considered, particularly with respect to claimed elements that are well known. In such cases, it is not necessary for the applicants to describe those elements in detail, and the element should be considered to include all art-recognized hardware or combination of hardware and software techniques for implementing that element. Furthermore, it is appropriate to give claims their

broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) (emphasis added). Limitations appearing in the specification but not recited in the claim are not read into the claim. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process."). See MPEP at § 2106.

With the requirements for patentability in mind, the applicants claim an apparatus comprising a vehicle and an active network. The applicants assert that an active network is known to the skilled artisan to include nodes, coupled by connection media defining a plurality of communication paths between the nodes, capable of performing custom operations on the messages that pass through the nodes. An active network does not require a central server or computing resources. And, active network nodes are aware of the contents of messages transported and can participate in the processing and modification of the messages while they travel through the network. That is, an active network is a defined physical structure that is unlike other communication structures such as communication busses and/or passive networks. Moreover, the applicants clearly distinguish particular kinds of passive networks, such as bus architectures, in the background portion of the specification. Beginning at page 2, line 3 of the specification, the applicants explain that, in accordance with existing design philosophy, various communication bus structures for interconnecting control elements, sensors, actuators and like structures within vehicle have been used, but that these architectures suffer a number limitations. The applicants further explain, beginning at page 2, line 19 of the specification, that network structures have been incorporated in connection with bus architectures. These passive network structures do not provide sufficient reliability for vehicle functional requirements such as power train, suspension, airbag systems, and the like, and usage has been limited to applications wherein information technologies are added to the vehicle. Thus, as the applicants have explained, existing architectures have not met the needs of efficient,

reliable integration of in-vehicle electronic technologies and plug-and-play upgradeability.

Clear from the foregoing discussion, the applicants have claimed a specific physical structure, namely an active network known to have particular characteristics, within a vehicle. This active network is not a bus architecture and is not a passive network or a combination of a passive network and a bus architecture. In light of the specification, the broadest reasonable interpretation of the term active network does not mean bus structures and/or passive networks. For the claims to be unpatentable, i.e., not to meet the requirements of 35 U.S.C. § 103(a), the prior art must teach or suggest each and every limitation contained in the claims, and particularly, in this case, must teach or suggest a vehicle including an active network. Because the prior art fails to teach or suggest this structure or methods employing such structures, claims 1-18 do meet the requirements of 35 U.S.C. § 103(a) and are patentable.

The instant claims further set forth a data packet for communication between first and second devices coupled by the active network, wherein the data packet includes an active portion. This active portion of the data packet may facilitate configuration of the network as a whole or individual elements of the active and/or device operation data. Because the prior art fails to teach or suggest the structure or methods employing such structures including an active network and fails to teach or suggest a data packet including an active portion, claims 1-18 do meet the requirements of 35 U.S.C. § 103(a) and are patentable.

The applicants have argued, and renew those arguments here, that Rogerson teaches an in-flight passenger entertainment system that utilizes a distributed network server architecture. This system uses a signal bus, bus 18, and a communication management unit, unit 20, to provide content signals onto the bus to be picked up by one or more display units, units 12. Thus, the described structure requires, contrary to the active network structure claimed by the applicants, a bus for communication between a central management unit and various distributed functional units. This is true also of the described wireless implementation that designates one of the base stations to function as a master with the remaining network machines functioning as subordinates to this master, wherein a single wireless communication link, i.e., a wireless LAN, links the elements. Therefore, Rogerson fails to teach or suggest the claimed active network of claim 1.

In the 08/05/03 Office action, the examiner agreed with the applicants that neither Muller nor Macera teaches a vehicle with an active network or first and second devices communicatively coupled by the active network. Therefore, neither Muller nor Macera anticipates the claimed invention. Instead, for the claimed invention not to meet the requirements of patentability in view of either Muller or Macera, the respective teachings must be combined with a reference or references that both teach a vehicle with an active network and teach a motivation or suggestion to combine or modify the respective teachings to arrive at the claimed invention, MPEP § 2142.

The examiner suggests that in their previous response the applicants fail to argue the combination of references and appear to argue only the individual references. The applicants respectfully disagree. To the contrary, by establishing, as they have, that Rogerson fails to teach or suggest a vehicle including an active network, and because neither Muller nor Macera teach a vehicle including an active network, they have established that the combination cannot and does not teach or suggest a vehicle including an active network. Regardless of any motivation to combine or modify the teachings of the references themselves, which it is the examiner's burden to identify and which the examiner has not identified, *see In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967); MPEP 2142, the combination, if made, does not teach each and every limitation of the invention claimed. Simply put, the combinations of Rogerson with Muller or Macera fail to teach or suggest a vehicle including an active network and a data packet including an active portion.

The examiner responds to the applicants contention that Rogerson fails to teach or suggest a vehicle including an active network with reference to portions of the abstract stating "a central server or centralized distribution network is no longer necessary" and to a brief reference in the specification stating that the described system "obviates the need for a central server." What Rogerson teaches is a bus, e.g., signal bus 18, to which a plurality of devices are coupled for communication, e.g., various server devices and display devices. Alternatively, Rogerson teaches a wireless LAN, which is a passive network. As argued repeatedly, and as set forth in the Reinold Declaration (attached with the applicants' 11/21/03 Preliminary Amendment), neither a bus architecture nor a passive LAN network is an active network. The bus architecture or wireless LAN, such as disclosed by Rogerson, is not

sufficiently reliable for integration of in-vehicle electronic technologies as the failure of the bus or LAN may result in unacceptable failure of complete vehicle systems. Instead, the claimed active network has active network elements, i.e., elements that can perform custom operations on the content of messages passing through the nodes and that are aware of the content of the messages transported and can participate in the processing and modification of the messages while they travel through the network, Reinold Declaration, p. 3, lines 6-11, and connection media coupling the active network elements such that multiple, dynamic communication paths may be established between devices coupled to the active network, specification, page 9, lines 23-25. The bus or LAN structures taught by Rogerson, whether having distributed server capability or not, are not the claimed active network structure.

For at least these reasons, claims 1-18 are allowable, and such action is respectfully requested.

CONCLUSION

In view of the above remarks, favorable re-consideration of this application and passage to issuance is respectfully requested. The examiner is invited to contact applicant's undersigned attorney with any questions regarding this response or the application as a whole. If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855.

Respectfully submitted for,

MARSHALL, GERSTEIN & BORUN LLP

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By:



Anthony G. Sitko
Reg. No. 36,278
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6357
(312) 474-6300